4. Unable to defend the propriety of the decision below, respondents contend the petition should be denied because the case "comes to this Court in an interlocutory posture." Opp. 29. They also obliquely suggest that the lower court's findings of other procedural violations is an independent basis for the judgment below. *Id.* at 29-30. Neither claim has merit.

It is well-established that "the interlocutory status of the case may be no impediment to certiorari where the opinion of the court below has decided an important issue, otherwise worthy of review, and Supreme Court intervention may serve to hasten or finally resolve the litigation." Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 260 (8th ed. 2002); see also 28 U.S.C. § 1254(1). This rule is borne out by the actual practice of this Court. In a recent Term, this Court reviewed over a dozen such interlocutory cases,[1] including numerous cases arising in a posture similar to the case at bar. Likewise, in the instant case, delaying review for trial on an improper legal standard would simply waste federal judicial resources.

---

[1] *E.g.*, *City of Los Angeles* v. *David*, 538 U.S. 715 (2003) (reviewing reversal of summary judgment); *Clackamas Gastro. Assocs., P.C.* v. *Wells*, 538 U.S. 440 (2003) (same); *City of Cuyahoga Falls, Ohio* v. *Buckeye Cmty. Hope Found.*, 538 U.S. 188 (2003) (same); *United States* v. *Navajo Nation*, 537 U.S. 488 (2003) (same); *Boeing Co.* v. *United States*, 537 U.S. 437 (2003) (same); *Bordon Ranch P'ship* v. *U.S. Army Corps of Eng'rs*, 537 U.S. 99 (2002) (per curiam) (same); *see also Dastar Corp.* v. *Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003) (reviewing partial affirmance and partial reversal of summary judgment); *Dow Chem. Co.* v. *Stephenson*, 539 U.S. 111 (2003) (per curiam) (reviewing reversal of dismissal of case); *Inyo County, Cal.* v. *Paiute-Shoshone Indians*, 538 U.S. 701 (2003) (same); *Cook County, Ill.* v. *United States ex rel. Chandler*, 538 U.S. 119 (2003) (same); *United States* v. *White Mt. Apache Tribe*, 537 U.S. 465 (2003) (same); *Meyer* v. *Holley*, 537 U.S. 280 (2003) (same); *Howsam* v. *Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002) (same); *Am. Ins. Ass'n* v. *Garamendi*, 539 U.S. 396 (2003) (reviewing reversal of preliminary injunction); *Pharm. Res. & Mfrs. of Am.* v. *Walsh*, 538 U.S. 644 (2003) (same).

Furthermore, there is little or no chance that future events in the district court would render this case moot before this Court rules on the petition. Aside from ordering a scheduling conference, the district court has taken no action since it received the Sixth Circuit's mandate in April 2005. Indeed, the district court's docket reflects the court's awareness that the petition for certiorari is pending. Furthermore, district court action to protect prospectively Zachary's educational interests would be unnecessary, because the parties agreed to an IEP by which Zachary is currently being educated in a public school program. Of course, if the Court grants the petition, it would have jurisdiction to protect its jurisdiction, and could stay any district court proceedings. 28 U.S.C. § 1651(a). Accordingly, future events will not render this case moot.

Finally, the lower court's conclusion that petitioner violated the IDEA by failing to provide a regular education teacher's participation in the IEP meetings is not an independent basis for the judgment below. As the lower court recognized, a procedural violation is not a basis for relief unless it causes "substantive harm." Pet. App. 31a. The lower court's determination that this procedural violation caused harm is thus inextricably tied to the erroneous substantive standard it adopted. Accordingly, reversal of that standard would, at a minimum, necessitate reversal and reconsideration of the lower court's finding of a harmful procedural violation.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

CHARLES L. WEATHERLY
THOMAS W. DICKSON
WENDY A. JACOBS
THE WEATHERLY LAW FIRM
3414 Peachtree Road, N.E.
Suite 1550
Atlanta, Georgia 30326
(404) 262-9500

CARTER G. PHILLIPS*
JOSEPH R. GUERRA
THOMAS A. BURNS
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Petitioner

* Counsel of Record

September 20, 2005